

## HONORABLE JAMES L. ROBART

**U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON**

MONTY J. BOOTH, ATTORNEY AT LAW,  
P.S., a Washington corporation, individually and  
on behalf of a class of Washington businesses  
similarly situated.

**Plaintiff,**

VS.

APPSTACK, INC., a Delaware corporation;  
STEVE ESPINOSA, individually; and JOHN  
ZDANOWSKI, individually.

## Defendants.

NO. 2:13-cv-01533-JLR

**DECLARATION OF BETH E.  
TERRELL IN SUPPORT OF  
PLAINTIFF'S MOTION FOR CLASS  
CERTIFICATION**

I, Beth E. Terrell, declare as follows:

1. I am a member of the law firm of Terrell Marshall Daudt & Willie PLLC (“TMDW”), counsel of record for Plaintiff in this matter. I am admitted to practice before this Court and am a member in good standing of the bars of the states of Washington and California. I respectfully submit this declaration in support of Plaintiff’s Motion for Class Certification of the above-captioned class action. Except as otherwise noted, I have personal knowledge of the facts set forth in this declaration, and could testify competently to them if called upon to do so.

1       2.     TMDW is a law firm in Seattle, Washington, that focuses on complex civil and  
 2 commercial litigation with an emphasis on consumer protection, product defect, employment,  
 3 wage and hour, real estate, and personal injury matters. The attorneys of TMDW have  
 4 extensive experience in class actions, collective actions, and other complex matters. They have  
 5 been appointed lead or co-lead class counsel in numerous cases at both the state and federal  
 6 level. They have prosecuted a variety of multi-million-dollar consumer fraud, wage and hour,  
 7 securities fraud, and product defect class actions. The defendants in these cases have included  
 8 companies such as Wal-Mart, Microsoft, Best Buy, Toyota, Sallie Mae, Comcast, ABM  
 9 Industries, Inc., AT&T, T- Mobile USA, Weyerhaeuser, Behr Products, American Cemwood,  
 10 Bank of America, Discover Financial Services, Capital One, and HSBC.

11       3.     TMDW has actively and successfully litigated class action lawsuits under the  
 12 Telephone Consumer Protection Act as well as the Washington State analog. TMDW has  
 13 taken the lead in some of the largest nationwide class actions filed under the TCPA, including  
 14 those filed against large financial institutions such as Sallie Mae, Bank of America, Discover  
 15 Financial Services, Capital One, and HSBC. I have been appointed co-lead counsel in two of  
 16 the largest pending MDLs involving TCPA claims, *In re Capital One Telephone Consumer*  
 17 *Protection Act Litigation*, 1:12-cv-10064 (N.D. Illinois), and *In re Monitronics International,*  
 18 *Inc. Telephone Consumer Protection Act Litigation*, MDL No. 1:13-MD-2493 (N.D. W. Va.).

19       4.     TMDW is litigating or has recently settled the following TCPA class actions:

- 20       • *In re Capital One Telephone Consumer Protection Act Litigation*—  
 21 Filed on behalf of consumers who received automated, prerecorded  
 22 collection telephone calls on their cellular telephone without their  
 23 prior express consent within the meaning of the Telephone Consumer  
 24 Protection Act, 47 U.S.C. § 227 *et seq.* I serve as court-appointed  
 25 Interim Co-Lead Counsel; preliminary approval of \$75,455,098.74  
 26 settlement was granted on July 29, 2014.
- 27       • *Rose, et al. v. Bank of America Corp., et al.*— Filed on behalf of  
 28 consumers who received automated, prerecorded collection  
 29 telephone calls on their cellular telephone without their prior express  
 30 consent within the meaning of the Telephone Consumer Protection

Act, 47 U.S.C. § 227 *et seq.* TMDW worked to negotiate a nationwide settlement of \$32,083,905, which was recently granted final approval.

- *Gehrlich v. Chase Bank USA*—Filed on behalf of consumers who received automated, prerecorded collection telephone calls on their cellular telephones without their prior express consent within the meaning of the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.* TMDW worked to negotiate a \$34,000,000 nationwide settlement; final approval is pending.
- *Wilkins, et al. v. HSBC Bank Nevada, N.A., et al.*—Filed on behalf of individuals alleging that HSBC made prerecorded calls using an automatic dialing system. The case settled for \$39,975,000 in 2014 on a class-wide basis, and final approval is pending.
- *In re Monitronics International, Inc. Telephone Consumer Protection Act Litigation*—Filed on behalf consumers who received automated, prerecorded solicitation telephone calls on their residential and business telephones without their prior express consent within the meaning of the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.*, the Washington Automatic Dialing and Announcing Device statute, RCW 80.36.400, and the Washington Consumer Protection Act, RCW 19.86 *et seq.* I serve as co-lead counsel in the MDL.
- *Arthur v. Sallie Mae, Inc.*—Filed on behalf of consumers who received automated, prerecorded collection telephone calls on their cellular telephones without their prior express consent within the meaning of the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.* TMDW worked to negotiate a \$24.15 million nationwide settlement, and final approval was granted in 2012.
- *Hanley v. Fifth Third Bank*—Filed on behalf of consumers who received automated, prerecorded collection telephone calls on their cellular telephones without their prior express consent within the meaning of the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.* TMDW negotiated a \$4.5 million settlement, which was granted final approval in December 2013.
- *Steinfeld v. Discovery Financial Services, et al.*—Filed on behalf of consumers who received automated, prerecorded collection telephone calls on their cellular telephones without their prior express consent within the meaning of the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.* TMDW negotiated an \$8.7 million settlement, which was granted final approval in March, 2014.

- 1     • *Chesbro v. Best Buy*—Filed on behalf of consumers who received  
2     automated, prerecorded solicitation telephone calls on their  
3     residential telephones without their prior express consent within the  
4     meaning of the Telephone Consumer Protection Act, 47 U.S.C. § 227  
5     *et seq.* TMDW negotiated a \$4.5 million settlement, which was  
6     granted final approval in September, 2014.
- 5.    TMDW is currently litigating or has recently settled the following class actions:
- 6     • *Milligan, et al. v. Toyota Motor Sales, Inc.*—Filed in 2009 on behalf  
7     of owners of 2001-2003 Toyota RAV4s containing defective  
8     Electronic Computer Modules, which cause harsh shifting conditions  
9     and permanent damage to the transmissions. TMDW worked to  
10    negotiate a nationwide class action settlement, and final approval was  
11    granted in January 2012.
- 10    • *Soto v. American Honda Motor Corporation*—Filed in 2012 on  
11    behalf of owners and lessees of 2008-2010 Honda Accords that  
12    consume motor oil at a much higher rate than intended, due to a  
13    systemic design defect. The case settled on a class-wide basis and  
14    final approval was granted in March, 2014.
- 13    • *Kitec Consolidated Cases*—Served as co-counsel in a national class  
14    action lawsuit against the manufacturers of defective hydronic  
15    heating and plumbing systems. The case settled for \$125,000,000,  
16    and final approval was granted in 2011.
- 16    • *Seraphin v. AT&T Internet Services, Inc., et al.*—A multi-state class  
17    action filed in 2009 on behalf of AT&T internet customers who paid  
18    \$20 a month or less for internet service and were assessed and Early  
19    Termination Fee when they cancelled service. A class settlement  
20    was approved by the Court in 2011.
- 20    • *Smith v. Legal Helpers Debt Resolution LLC*—Filed in 2011 on  
21    behalf of consumers who were charged excessive fees for debt  
22    adjusting services in violation of Washington law. Class settlements  
23    were approved by the Court in December 2012 and December 2013.
- 23    • *Brown v. Consumer Law Associates LLC, et al.*—Filed in 2011 on  
24    behalf of consumers who were charged excessive fees for debt  
25    adjusting services in violation of Washington law. A class settlement  
26    was approved by the Court in 2013.
- 26    • *Bronzich, et al. v. Persels & Associates, LLC, et al.*—Filed in 2010  
27    on behalf of consumers who were charged excessive fees for debt  
   adjusting services in violation of Washington law. A class settlement  
   was approved by the Court in 2013.

- 1     • *Newell v. Home Care of Washington, Inc., et al.*—TMDW represents  
2       a certified class of more than 400 in-home health care workers who  
3       allege violations of state wage and hour law. A class settlement was  
4       recently negotiated.
- 5     • *Hill v. Xerox Business Services, LLC, et al., and Douglas v. Xerox*  
6       *Business Services, LLC, et al.*—TMDW represents two certified  
7       classes of current and former call center workers who allege  
8       violations of state and federal wage and hour laws. Both cases were  
9       filed in 2012 and are pending in the United States District Court for  
10       the Western District of Washington.
- 11     • *Dickerson v. Cable Communications, Inc., et al.*—Filed in 2012 on  
12       behalf of approximately 500 individuals alleging their employer  
13       violated Oregon's wage and hour laws. Defendants' systematic  
14       scheme of wage and hour violations involved, among other things,  
15       failure to pay non-managerial installation technicians for all hours  
16       worked, including overtime. The case settled on a class-wide basis,  
17       and approval was granted in 2013.
- 18     • *Khadera v. ABM Industries, Inc.*—TMDW represented 337  
19       employees who alleged violations of federal and state wage and hour  
20       laws. The case settled, and final approval was granted in 2012.
- 21     • *Simpson v. ABM Industries, Inc.*—TMDW represented a CR 23 class  
22       of approximately 6,800 employees who alleged Washington State  
23       wage and hour violations. The case settled in March 2012, and final  
24       approval of the settlement was granted on September 2012.
- 25     • *Barnett, et al. v. Wal-Mart Stores, Inc.*—Filed in 2001 on behalf of  
26       Washington employees alleging wage and hour violations by the  
27       country's largest private employer. After more than seven years of  
28       litigation, TMDW obtained a settlement of \$35 million on behalf of a  
29       certified class of approximately 88,000 employees. That settlement  
30       was approved in July 2009.
- 31     • *McGinnity, et al. v. AutoNation, Inc., et al.*—TMDW represented a  
32       certified class of more than 500 employees who were denied earned  
33       vacation benefits. After nearly two years of litigation before an  
34       arbitrator, we obtained an award of \$2.34 million on behalf of the  
35       class. We successfully defended the award on appeal, and the  
36       Washington Supreme Court denied defendants' petition for review.  
37       A judgment in excess of \$2,600,000 was satisfied in September  
38       2009.

1           • *Ramirez, et al. v. Precision Drywall, Inc.*—TMDW represented a  
 2 certified class of workers who alleged they were not paid for  
 3 overtime work. The case was tried before a jury during a five-week  
 4 period in 2010, and TMDW successfully obtained a judgment for the  
 5 workers in excess of \$4,000,000. TMDW continues to work on  
 6 enforcing the judgment against multiple defendants.

7           6. I am the lead attorney from TMDW in the instant litigation. A founding  
 8 member of TMDW, I concentrate my practice in complex litigation, including the prosecution  
 9 of consumer, defective product, and wage and hour class actions. I have served as co-lead  
 10 counsel on numerous multi-state and nationwide class actions. I also handle a variety of  
 11 employment issues including employment discrimination, restrictive covenant litigation, and  
 12 pre-litigation counseling and advice.

13           7. I received a B.A., magna cum laude, from Gonzaga University in 1990. In  
 14 1995, I received my J.D. from the University of California, Davis School of Law, Order of the  
 15 Coif. Prior to forming TMD in May 2008, I was a member of Tousley Brain Stephens PLLC. I  
 16 am a frequent speaker at legal conferences on a wide variety of topics including consumer class  
 17 actions, employment litigation, and electronic discovery, and I have been awarded an “AV”  
 18 rating in Martindale Hubble by my peers.

19           8. I am actively involved in several professional organizations and activities. For  
 20 example, I currently serve as a Vice President for the Washington State Association of Justice  
 21 (“WSAJ”), and serve on the WSAJ Executive Committee. I am also the current Chair of the  
 22 WSAJ’s Consumer Protection Section. I am the current Chair of the Washington Employment  
 23 Lawyers Association and a member of the Public Justice Foundation’s Board of Directors. I  
 24 serve on the Foundation’s Development, Case Evaluation, Membership, and Class Action  
 25 Preservation Committees.

26           9. I have been repeatedly named to the annual Washington Super Lawyers list  
 27 (2005, 2010, 2011, 2012, 2013, and 2014) by Washington Law & Politics Magazine. I was  
 also named to their Top 100 Washington Super Lawyers list (2014) and their Top 50 Women  
 Super Lawyers list (2012, 2013, and 2014).

1       10.     Mary B. Reiten is a member of TMDW. Ms. Reiten received her B.A. with high  
 2 honors from the University of California, Berkeley in 1991 and graduated from the University  
 3 of California, Hastings College of Law in 1998. Prior to joining TMDW, Ms. Reiten was a  
 4 member of Tousley Brain Stephens PLLC. Ms. Reiten was also an associate at Lieff Cabraser  
 5 Heiman & Bernstein for one year and clerked for the superior courts of Sitka, Alaska and San  
 6 Francisco, California. Ms. Reiten has represented plaintiffs in several consumer class actions,  
 7 including *Spafford v. EchoStar*; *Hartman, et al. v. Comcast*; *Richison v. American Cemwood*  
 8 *Corp.*; *Zwicker et al. v. General Motors Corporation*; and *Trimble v. Holmes Harbor Sewer*  
 9 *District, et al.* In 2004, Ms. Reiten was named a Washington “Rising Star” by Washington  
 10 Law & Politics magazine.

11       11.     Whitney B. Stark is an associate at TMDW. Ms. Stark received her B.A. from  
 12 Vassar College and graduated from the University of California, Hastings College of Law. Ms.  
 13 Stark is a member of the bar of the states of California, Washington, and Oregon. Ms. Stark  
 14 has extensive experience in complex litigation, including consumer, employment and civil  
 15 rights cases. Her practice emphasizes consumer protection and employment class actions,  
 16 including complex wage and hour litigation, employment discrimination, unfair competition,  
 17 misrepresentation and fraudulent activities.

18       12.     Prior to joining TMDW, Ms. Stark was an associate at Rukin, Hyland, Doria &  
 19 Tindall and at the Sturdevant Law Firm where she focused on employment and high-impact  
 20 consumer rights class actions. Ms. Stark has also litigated fair housing and predatory lending  
 21 cases at the Fair Housing Law Project. Ms. Stark served as a judicial extern to the Honorable  
 22 Magistrate Edward Chen of the United States District Court for the Northern District of  
 23 California.

24       13.     TMDW is jointly prosecuting this proposed class action with the Gallagher Law  
 25 Office P.S. Gallagher Law Office P.S. is a law office in Bainbridge Island, Washington, that  
 26 focuses on civil litigation with an emphasis on consumer protection and employment matters,  
 27

including the prosecution of class actions involving multi-million-dollar disputes involving allegations of violation of consumer laws. The defendants in past cases have included companies such as Wells Fargo Bank NA and Echostar Communications, Inc.

14. Daniel C. Gallagher concentrates his practice in employment disputes and consumer class actions. Mr. Gallagher has served as co-lead counsel on state and nationwide class actions. He also handles a variety of employment issues, including employment discrimination and whistle-blower retaliation. Mr. Gallagher received a B.A., with honors, from the University of Iowa in 1986. In 1990, he received his J.D. from the University of Oregon School of Law. Mr. Gallagher has practiced in Washington State and Federal Courts since 1992.

15. TMDW, along with the Gallagher Law Office, has invested numerous hours and advanced significant costs into the investigation and prosecution of this case, and we have the ability and intention to continue to pursue the case to a successful conclusion.

I declare under penalty of perjury under the laws of the state of Washington and the United States of America that the foregoing is true and correct.

EXECUTED this 14th day of November, 2014 at Seattle, Washington.

/s/ Beth E. Terrell, WSBA #26759  
Beth E. Terrell, WSBA #26759

CERTIFICATE OF SERVICE

I, Mary B. Reiten, hereby certify that on November 14, 2014, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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## *Attorneys for Defendants*

DATED this 14th day of November, 2014.

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